IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2371 of 2006
Date of Decision : 15.11.2007

Balraj Singh and others .....Appellants

versus

State of Haryana and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.V.P.Malik, Advocate for the appellants.
Mr.Sidharth Sarup, AAG, Haryana for the respondents.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court whereby suit of the plaintiffs for recovery on account of loss of standing crops to the extent of Rs.40000/-, was dismissed.

It is the case of the plaintiffs that they are owners in possession of the land measuring 23 kanals 9 marlas which is being irrigated by Pabra Distributary through the sanctioned watercourse. The grievance of the plaintiffs is that the banks of the said watercourse are poorly maintained. During the intervening night of 15/16.12.1999, a breach occurred in the banks of the watercourse abutting the fields of the plaintiffs and due to that breach, the standing wheat crop of the plaintiffs washed in the floods and perished and on account of such breach, the plaintiffs have suffered a loss due to negligence and carelessness of the defendants.

In reply, it is the stand of the defendants that some beneficiaries have made cut in the canal just to give water to their fields during the rabi

crops and the canal was immediately repaired and no loss was caused as per the revenue record.

The learned trial Court decreed the suit partly awarding a sum of Rs.20,000/- on account of lifting the silt as a consequence of the water flow flowing to their fields, from the land of the plaintiffs. However, the learned First Appellate Court found that earlier the plaintiffs filed a suit for mandatory injunction in January, 2000 seeking directions to the defendants to remove the silt which had accumulated up to the height of 2-3 feet. But copy of the plaint of the earlier suit has not been filed. It was found that if the plaintiffs have suffered any loss, that fact would have been mentioned in the plaint, but the same has been kept back by the plaintiffs. Still further, it has been found that undisputedly, the canal water has entered into the fields of the plaintiffs, but it is not a case of negligence of the defendants. A deliberate cut was made by the land owners and such like cuts are made every year after the sowing season. It was also found that these cuts are usually made at night time and once the cut is made, there is no stopping. The water flows out and in this case the breach had widened that it took 175 labourers to plug the breach. The department had put in all sources to stop the water. Thus, it was found that the plaintiffs have failed to prove the negligence on the part of the department.

As per the plaintiffs, the breach was in the intervening night of 15/16.12.1999. Admittedly, the earlier suit was filed in January, 2000 which was withdrawn on 3.2.2000. Any damage to the crops of the plaintiffs was caused prior to the filing of the suit. Once the plaintiffs have withdrawn the suit, it is not open to the plaintiffs to claim damages by way of filing subsequent suit. Still further, the plaintiffs have not established

negligence of the defendants in maintaining the canal. The mere fact that there is breach, is not an inference of negligence on the part of the defendants. The learned First Appellate Court has examined all the facts and circumstances of the case to returned a finding that the plaintiffs are not entitled to any relief. The finding recorded by the learned First Appellate Court is based on proper appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

I do not find any illegality or irregularity in the finding recorded by the learned First Appellate Court which may give rise to any substantial question of law for consideration of this Court in second appeal. Consequently, the present appeal is dismissed in limine.

15-11-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**